

REMARKS

The Election/Restriction requirement is improper on its face. The Election/Restriction requirement is logically inconsistent. Since Claims 7 and 8 are a part of both groups I and II, election of either group would require examination of claims in both groups. The Election/Restriction requirement must be withdrawn.

The Election/Restriction requirement is also without a factual foundation. The Office Action uses circular arguments stating “the inventions are distinct for the reasons given above”. However, there are no reasons given. The Office Action has merely restated the rule that “Inventions in this relationship are distinct if it can be shown the (1) the combination as claimed does not require the particulars of the sub combination as claimed for patentability, and (2) that the sub combination has utility by itself or in other combinations.” The questions of “what is the sub combination?”, and “what is the separate utility of the sub combination?” which are paramount to the election/restriction requirement have not been addressed.

The MPEP requires that these questions be addressed:

“The burden is on the examiner to provide an example.” (MPEP 806.05 (d))

“The inventions are distinct if it can be shown” (MPEP 806/05 (c))

“The examiner must show, by way of example, that one of the sub combinations has utility other than in the disclosed combination.” (MPEP 806.05 (d))

“Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct...” (MPEP 808).

The Office Action has failed to provide **any factual basis** as required for the Election/Restriction requirement.

The Election/Restriction requirement must be withdrawn for the following reasons. First, the restriction has been shown above to be improper on its face. Second, no attempt has been made to providing a factual basis (examples) showing why the restriction is required. The Office Action has not met its burden.

The Applicants request withdrawal of the Election/Restriction requirement and examination of Claims 1-11.

ELECTION WITH TRAVERSE

The Applicants provisionally elect Group I, Claims 1-8 with **traverse**.

Respectfully submitted,



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